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8 Attorneys for Defendants
9 DEL MAR DATATRAC, INC. and
10 FISERV, INC.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 AMERICAN RESIDENTIAL EQUITIES,
12 LLC,

13 Plaintiff,

14 vs.

15 DEL MAR DATATRAC, INC and
16 FISERV, INC.,

17 Defendants.

No.: 08-cv-00545-BEN (POR)

Assigned to The Honorable Roger
Benitez

**NOTICE OF PLAINTIFF'S NON-
OPPOSITION TO DEFENDANTS'
PARTIAL MOTION TO DISMISS**

Date: June 23, 2008
Time: 10:30 a.m.
Courtroom: 3

Venue Transferred: March 24, 2008

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, plaintiff American Residential Equities, LLC's
3 ("Plaintiff") has not filed an opposition to defendants Del Mar Datatrac, Inc., and
4 Fiserv, Inc., ("Defendants") Partial Motion to Dismiss Complaint Pursuant To Federal
5 Rule Of Civil Procedure 12(b)(6) (the "Motion"). Pursuant to Civil Local Rule
6 7.1.e.2., Plaintiff's opposition to the Motion should have been filed at least fourteen
7 (14) calendar days before the June 23, 2008 hearing, *i.e.*, on June 9, 2008.

8 As of June 16, 2008, Defendants have not been served with Plaintiff's
9 Opposition and, according to this court's docket; no such Opposition has been filed.
10 Pursuant to Civil Local Rule 7.1.f.3, "If an opposing party fails to file the papers in
11 the manner required by Civil Local Rule 7.1.e.2, that failure may constitute a consent
12 to the granting of a motion or other request for ruling by the court." Accordingly,
13 Defendants respectfully request that the Court grant the Motion in its entirety, and
14 specifically that (1) Fiserv, Inc. be dismissed from this action, and (2) Plaintiff's
15 claims for Fraud in the Inducement, Negligent Misrepresentation, and under Florida's
16 Deceptive and Unfair Trade Practices Act be dismissed, with prejudice.

17
18 DATED: June 17, 2008

REED SMITH LLP

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20 By s/ Christopher O. Rivas
21 Christopher O. Rivas
22 Attorneys for Defendants
23 DEL MAR DATATRAC, INC.,
24 AND FISERV, INC.
25 crivas@reedsmith.com
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is REED SMITH, 355 South Grand Avenue, Suite 2900, Los Angeles, CA 90071. On June 17, 2008, I served the following document(s) by the method indicated below:

***NOTICE OF PLAINTIFF'S NON-OPPOSITION
TO DEFENDANTS' PARTIAL MOTION TO DISMISS***

- ☐ by transmitting via facsimile on this date from fax number 213.457.8080 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing.
- ☐ by causing the document(s) listed above to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service (*via UPS*) for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.
- ☐ by transmitting via e-mail to the parties at the email addresses listed below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the United States that the above is true and correct. Executed on June 17, 2008, at Los Angeles, California.

/s/ Arthur Escalante
Arthur Escalante

SERVICE LIST

American Residential Equities, LLC,
v.
Del Mar DataTrac, Inc. and FISERV, Inc.
Case No. 08-cv-00545-BEN (POR)

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NO CM/ECF FILERS

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